THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10716 of 2007

Dated:26.07.2007

Between:

G.Isthari, S/o.G.Durgaiah.

…Petitioner

and

The District Collector,
(Panchayat Wing), Warangal, Warangal District,
and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10716 of 2007

ORDER:

The petitioner, who belongs to Scheduled Caste, is the Sarpanch of Bachannapet Gram Panchayat, who was elected in the panchayat elections held in the month of August 2006 in accordance with the provisions of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'), and the Andhra Pradesh Panchayat Raj Conduct of Elections of Members and Sarpanch of Gram Panchayat, Members of Mandal Parishad and Members of Zilla Parishad Rules, 1994. He filed the present Writ Petition assailing the proceedings of the District Collector (Panchayat Wing), dated 16.05.2007, whereby and whereunder he was informed that he incurred disqualification under Section 19(3) of the Act to be a Sarpanch with immediate effect.

The brief fact of the matter is as follows. The petitioner was elected as Sarpanch in 2006. One Sri A.Bixapathi and other residents of the Gram Panchayat submitted a petition to the District Collector (first respondent) alleging that the petitioner got more than two children, and therefore, he incurred disqualification under Section 19(3) of the Act. The District Collector issued a show cause notice on 25.04.2007 calling upon the petitioner to show cause as to why action should not be taken against him under Section 19(3) of the Act for having given birth to the seventh child after specified date under the Act. The petitioner submitted explanation contending that he got no

child after specified date under the Act. After considering the explanation, the District Collector passed orders on 16.05.2007 disqualifying the petitioner and further directing the Mandal Parishad Development Officer to intimate the casual vacancy to the Collector's Office.

Learned Counsel for the petitioner submits that under Section 22(1) of the Act the Executive Authority of the Gram Panchayat has to inform about the complaint of disqualification to the District Panchayat Officer, who shall then intimate the same to the concerned Sarpanch/Ward Member about such allegation of disqualification, in which event, such Member or Sarpanch within a period of two months can seek a decision from the District Court if the allegation is denied. According to the learned Counsel, no power inheres either in the Panchayat Secretary or the District Panchayat Officer or the District Collector straightaway to disqualify an elected candidate. This legal position is not seriously disputed or denied.

In **N.Tirupataiah v. District Panchayat Officer, Nellore**[1], this Court has considered the scope of Section 22 of the Act. Paragraphs 8 and 9 of the reported judgment are relevant and read as under.

> An analysis of above provision would show that i) any voter or authority may make allegation in writing that a member or a sarpanch of Gram Panchayat is not qualified under Sections 17 to 20 of the Act; ii) such an allegation in writing has to be made to the executive authority, which according to Section 2(12) means the panchayat secretary appointed to each Gram Panchayat[2]; iii) on receipt of such complaint in writing, the executive authority has to inform the District Panchayat Officer, who in turn will send an intimation to the member or sarpanch, who allegedly incurred the disqualification; iv) on receipt of such intimation, if there is any dispute as to disqualification alleged, such member or any other member of the Gram Panchayat, or panchayat secretary or the Commissioner, are entitled to apply to the District Court for a decision as to whether a member or sarpanch incurred disqualification and v) such application to the District Court has to be made within a period of two months from the date on which such intimation is given or doubt is entertained.
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> A plain reading would suggest that the complainant is not given any liberty to move an application to the District Court. Only four categories of persons or agencies, namely, a) the member, who received the intimation; b) any other member; c) the panchayat secretary (executive authority) on a direction of the Gram Panchayat and d) the Commissioner of Panchayat, are entitled to apply to the District Court for a decision. When the whole exercise is initiated at the instance

> of a “person” i.e. any resident of Panchayat, can it be said that the legislature purportedly intended to deny an opportunity to complainant to approach the District Court when none (sic. any) of the four categories of persons fails to initiate action before the Court? Strict interpretation of the text of the legislation compels one to answer the question in the affirmative but that would render the opportunity given to any person to complain about the disqualification incurred by a member or sarpanch, an empty formality if such a person is not given an opportunity to go to the Court and seek a decision as to whether the elected person against whom the complaint is made incurred disqualification or not. In a situation of this nature, the provision calls for purposive interpretation. The principle of purposive interpretation requires the Court to interpret legislative provision in such a manner, which ensures the proper exercise of a right by the person on whom such right is given and in consonance with the object with which a provision is enacted.

In view of the above, the impugned order of the District Collector disqualifying the petitioner suffers from grave error apparent on the face of the record. Therefore, the same is accordingly set aside. It shall be open to the District Panchayat Officer concerned to issue a fresh notice of intimation to the petitioner about the alleged disqualification. In such an event, the petitioner shall have two months time under Section 22(1) of the Act to approach the District Court for a decision on the same.

The Writ Petition, with the above observations, is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

26.07.2007
vs

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[1] 2005 (1) ALT 426

[2] As amended by A.P.Act No.22 of 2002 with effect from 20.06.2002